

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**NORTHERN ILLINOIS GAS COMPANY**  
**d/b/a NICOR GAS COMPANY**

Petition pursuant to Section 8-104 of the Public Utilities  
Act To Submit an Energy Efficiency Plan

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Docket No. 13-0549

**REPLY BRIEF OF**  
**THE PEOPLE OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS  
By Lisa Madigan, Attorney General

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), pursuant to the schedule established by the Administrative Law Judge (“ALJ”), hereby file their Reply Brief in the above-captioned proceeding.

**I. INTRODUCTION**

A review of Nicor’s Brief reveals that some critical issues that arose during the Commission Staff’s and Intervenor review of the NICOR plan, namely the importance of SAG involvement in the updating of Net-to-Gross efficiency measure evaluation, have been resolved. Others remain contested and are primarily focused on the Company’s repeated requests for minimization of the risk of financial penalty under Section 8-104(i) of the Act. Certain Nicor proposals related to program flexibility allowances, requests to reduce calculated savings goals by changes in annual updates to Net to Gross (“NTG”) and Technical Resource Manual (“TRM”) values, and a request for an automatic 10% “residual risk” adjustment factor that would further insulate the Company from risk of non-achievement of forecasted savings, if granted, would severely undermine the General Assembly’s goal of achieving maximum natural gas energy savings.

As noted in the AG Initial Brief, the Commission's goal in this docket is to enter an order that achieves the appropriate balance of (1) providing the Company with the necessary certainty to allow it to create robust programs that achieve maximum energy savings over a longer term, and (2) ensuring that the right incentives are in place to ensure best practices in Nicor's delivery of energy efficiency programs. Commission adoption of the OAG's recommendations would accomplish just that. As discussed below, the Commission should order ComEd to refile its three-year energy efficiency plan ("the Plan") under Section 8-104(f) and modify its portfolio offerings and savings goals consistent with the recommendations described below.

## **II. PROGRAMS, GOALS AND BUDGETS**

As noted in the AG's Initial Brief, the Company has requested Commission approval of an energy saving goal target that falls below the statutory requirements listed in Section 8-104(c), due to the program spending limitations imposed by the statutory cost cap. 220 ILCS 5/8-104(d). The People do not object to approval of modified savings goals, in light of the budget cap restrictions. That being said, the Commission can and should order certain modifications to proposed programs to ensure maximum savings goal achievement, notwithstanding these revised goals, as discussed below. Perhaps more importantly, it is essential that the Commission approve an evaluation framework that incites best practices in the management of Nicor's efficiency programs. Nicor's specific proposal to create adjustable savings goals based on revisions to Net-to-Gross and Technical Resource Manual evaluation updates, as well as its request for a 10% risk adjustment factor undermine achievement of maximum energy savings goals. As discussed elsewhere in this Brief and in the People's Initial Brief, those requests should be denied by the Commission – particularly in light of the reduced level of energy savings that are being proposed in this docket.

**A. The Commission Should Order the Company to Either Revise or Discontinue Its Proposed Residential Behavioral Energy Savings (BES) Program**

In their Initial Brief, the People noted that they can conditionally support Nicor's proposed Residential Behavioral Energy Savings program based upon the Company's clarification that it intends to offer BES as *a pilot* to explore potential new strategies. AG IB at 10-11. The People clearly stated that their support is based upon an understanding that Nicor will issue a Request for Proposals and solicit new and innovative ideas to more broadly address residential behavioral opportunities and, perhaps more critically, do it in a *cost-effective* manner. AG IB at 10-11; AG Ex. 2.0 at 30. The People, therefore, urge the Commission to enter an Order that requires Nicor to deliver a program that is cost-effective, and to direct potential bidders in its RFP to put forth cost-effective proposals. If those RFPs produce savings estimates that show the BES program is simply not cost-effective, then the Commission should direct Nicor to pursue other resources with these funds.

In the event that the Company is unwilling or unable to implement a cost-effective proposal, the People restate the concerns noted in their Initial Brief and first raised by Mr. Mosenthal in his direct testimony that questioned the wisdom of offering this program given the projection that it would not be cost-effective. AG IB at 11; AG Ex. 1.0 at 7-14. The People also note that Nicor continues to resist the potential savings and benefits of offering a joint program with ComEd. Nicor IB at 45. Mr. Mosenthal pointed out that the cost-effectiveness of the BES program would significantly improve if Nicor offered the program jointly with ComEd's behavioral program. AG IB at 11; AG Ex. 1.0 at 13. Again, if the vendor is unable to produce a cost-effective program or produce a jointly provided cost-effective program, the Commission should direct those BES-program funds to be redirected to another Residential program. The

People also note that Staff supports a similar requirement that Nicor enter into a joint program with ComEd in order to achieve maximum benefits for customers. Staff IB at 10-12.

For all of these reasons and those presented in the People's Initial Brief, the People urge the Commission to direct Nicor to offer BES as a pilot to solicit innovative ideas to broadly address residential behavioral opportunities in a cost-effective manner. The People also encourage the Commission to direct Nicor to pursue this pilot as a joint effort with ComEd. The Commission's Order should also provide that if the pilot cannot be offered in a cost-effective manner, the dedicated funds should be re-directed to other Residential programs.

**B. Nicor's 10% Residual Risk Adjustment Request is Contrary to Law and the Public Policy of Illinois**

The People, in their Initial Brief, discussed their opposition to Nicor's proposed 10% residual risk reduction strategy. *See, generally*, AG IB at 12-20; AG Ex. 1.0 at 36-42. Specifically, the People raised concerns that Nicor's proposal is contrary to the Act, without precedent and should be rejected by the Commission. *Id.* Staff and other Intervenors also oppose Nicor's risk reduction strategy. Staff IB at 37; ELPC IB at 3-4.

As previously noted by the People, there is no justification in policy or law for this unprecedented device. AG IB at 12-13. The plain language of Section 8-104 of the Act<sup>1</sup> makes it clear that the Company shall be subject to penalties for failing to achieve 100% of the goal. Nicor, by seeking to avoid accountability for factors within its control, is seeking to avoid bearing any of the risk associated with energy savings performance. This is not only poor public policy but removing risk from the utility renders null the inclusion of these penalties and runs

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<sup>1</sup> 220 ILCS 5/8-104(i).

counter to the plain meaning of the statute.<sup>2</sup> The legislature was clear that the utility – not ratepayers -- should be subject to risk for non-performance. Nicor’s residual risk adjustment, however, shifts that risk onto its customers by reducing the requisite number of savings goals to be achieved for non-performance.

The People also noted that the Commission was recently faced with a similar risk avoidance mechanism presented by ComEd in its Energy Efficiency Plan 3 docket (13-0495). The Commission saw through a similar set of arguments, finding that:

The Commission rejects ComEd’s 5% risk adjustment. The Commission finds that the Company’s goal should be set at the level it is projected to be able to achieve, without an artificial 5% reduction.

ICC Docket No. 13-0495, Order of January 28, 2014, at 39. For all of these reasons, the People urge the Commission to once again see past the arguments raised by the Company and reject Nicor’s proposed 10% risk reduction proposal.

In his Rebuttal Testimony, Mr. Mosenthal noted that Nicor has already developed its best estimate of savings and has no basis to further reduce goals. AG IB at 14-16; AG Ex. 2.0 at 23. Nicor, in response, claims that this testimony “ignores the nature of changing TRM and NTG assumptions – Nicor Gas has presented its best estimate of savings if – and only if – those TRM and NTG assumptions do not change.” Nicor IB at 42-43, citing Nicor Ex. 12.0 at 21. The People addressed this argument in greater detail in their Initial Brief. AG IB at 14. Simply stated, however, Nicor appears to be over-compensating for any potential risk. First, as noted by AG witness Mosenthal, Nicor requests to implement this 10% reduction in estimated net savings

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<sup>2</sup> See *Kennedy v. Community Unit School District*, 23 Ill.App.3d 382, 384, 319 N.E.2d 243, 246 (1974) (statutes are to be construed to give full effect to each word, clause, and sentence, so that no word, clause, or sentence is surplusage or void).



even where a NTG value is 100%.<sup>3</sup> AG IB at 15; AG Ex. 1.0 at 37. This means that Nicor has adopted this discount even where it is exposed to zero risk of a NTG adjustment. AG IB at 15. Essentially, if the Commission and Intervenors presume that Nicor has successfully and accurately planned, then it is asking the Commission to only set its goals at 90% of what it actually plans to achieve as a buffer against the possibility that it might not fully succeed. In a similar vein, if the Commission approves Nicor's proposed 10% risk reduction, Nicor would be stripped of any incentive to push for reaching the full 100% and could unilaterally halt its efforts once it hits 90%. AG IB at 15.

While the People acknowledge the inherent uncertainties and difficulties in estimating NTG values, the People reiterate that these characteristics do not justify Nicor's proposal. AG IB at 15. In their Initial Brief, the People noted that Mr. Mosenthal believes that the current estimated NTG values that Nicor is proposing be deemed are based on the latest evaluations and best information. AG IB at 15-16; AG Ex. 1.0 at 38. Therefore, there is no reason to assume they are systematically overestimated by 10%, especially given they come from the same types of evaluations that are envisioned for future NTG estimation. AG IB at 15-16.

In addition, the People also noted that reduced future NTG values would only impact the savings for the last two years at most. This stands in contrast to Nicor's proposal for the 10% discount to apply all three years. The People also noted that despite Nicor's argument that the 10% adjustment is not an "NTG adjustment factor," this adjustment was specifically intended to account for NTG evaluation risk and was effectively assuming 10% lower NTG than the plan predicts. AG IB at 16, *citing to* Nicor Ex. 1.0 at 34-35. Finally, the People noted that program

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<sup>3</sup> The People pointed to the example of Nicor's BES program. AG IB at 15. Here, Nicor has still adopted this discount, even though it is exposed to zero risk of a NTG adjustment for this program. Mr. Mosenthal believes that this is because the BES program evaluations base savings on billing analyses of the participant group as compared to a control group of similar customers that are not participating. AG IB at 15; AG Ex. 1.0 at 37. The result is that the evaluation results simply provide a net effect of the program without estimating any NTG value. AG Ex. 1.0 at 37.

management is a critical factor and it is, therefore, unreasonable to adopt an unprecedented risk avoidance mechanism based solely on the potential assumption that some level of risk *could be* biased against the utility. AG IB at 19. Utilities’ program design, marketing and implementation practices can and do significantly influence NTG values. If utilities are held harmless from NTG accountability then they can become indifferent to encouraging customers to expand their efficiency investments beyond what they already planned. *Id.*

The People also discussed why there is no reason to believe that Nicor’s estimates are biased upward. *See, generally*, AG IB at 16-19; AG Ex. 2.0 at 2-3. In response, Nicor argues that TRM and NTG evaluations are biased downward and that “even if evaluation adjustments are symmetrical, Nicor Gas faces uneven outcomes” and Nicor will be subject to a \$600,000 statutorily imposed penalty. Nicor IB at 43. Nicor also goes on to say that “there is no corresponding reward in the event that Nicor Gas exceeds its goals.” Nicor IB at 43. Thus, Nicor claims that it is appropriate to provide the Company with a mechanism to manage the downside risk.

As previously noted by the People, Nicor should not be allowed this unprecedented hedge against risk – no matter how Nicor characterizes its purported risk. AG IB at 16-17. By including penalty provisions in Section 8-104(i), the General Assembly made it clear that no utility – Nicor included – should be *insulated* from risk. The People also point to the irony in Nicor’s suggestion that *because of* the statutory penalties assessed if it fails to meet goals, it should be allowed a 10% cushion. Nicor IB at 43; Nicor Ex. 2.0 at 10. As previously noted by the People, Nicor’s proposal directly contravenes the legislature’s intent in establishing penalties and savings goals and declining to provide financial incentives, protections or rewards to the utilities in providing energy efficiency programs. AG IB at 17. Simply put, it is not the job of the Commission to insulate the Company from these penalty provisions. The arguments presented in Nicor’s Initial Brief still fail to present any reason to justify the Commission

providing a savings cushion that is so clearly contrary to the explicit language of Section 8-104 of the Act.

The People reiterate the troubling nature of Nicor's statements, particularly in how Nicor forgets that it serves the interests of the ratepayers and uses ratepayer money in providing these programs. AG IB 17-19. While it compares the potential \$600,000 penalty against the omission of shareholder incentives as asymmetric risk, it ignores the much higher risk of underperformance that is absorbed by ratepayers. In their Initial Brief, the People provided an example of how problematic Nicor's risk reduction plan is for ratepayers. AG IB at 18. In summary, the People's example demonstrates how *the ratepayers already are absorbing an order of magnitude more risk than Nicor* because it is their money that is lost if Nicor performs poorly. *Id.* Adding to the inherently unfair nature of Nicor's proposal is the fact that performance is out of ratepayers' control and clearly in Nicor's control. *Id.* That Nicor shareholders are asked by the legislature to share a relatively *de minimis* amount of the total risk should not be justification for further risk reduction. *Id.*

The People also note that Staff and other Intervenors soundly reject Nicor's risk reduction proposal. Staff points to the Commission's order in the ComEd Plan 3 docket (13-0495) and notes that "[t]he Commission should require savings goals be recalculated to remove the 10% residual risk adjustment factors applied to the NTG ratios by Nicor." Staff IB at 37. ELPC also points to the 13-0495 order and states that:

Nicor not only wants the Commission to set its goals significantly below the statutory targets, but also wants the Commission to further reduce its goals in order to eliminate all risk. This is inappropriate and, moreover, contravenes the legislative intent of Section 5/8-104 of the Public Utilities Act ("PUA").

ELPC IB at 5. As noted above and in the People's Initial Brief, this attempt is contrary to Section 8-104 of the Act, has previously been rejected by the Commission, and the Company has not justified its adoption. Therefore, the People urge the Commission to reject Nicor's proposal.

### **III. PORTFOLIO FLEXIBILITY**

#### **A. Nicor's Request for Unlimited Flexibility Should Be Rejected**

The People, in their Initial Brief, raised concerns that the Company is effectively proposing unlimited flexibility to modify its Plan 2 as it deems fit, subject only to a couple of self-imposed restraints. AG IB at 20. The People also took issue with Staff's proposed reporting requirements that will do little more than add layers of bureaucracy for all parties involved. AG IB at 20. In the end, if the Commission approves the Company's request and also incorporates Staff's burdensome reporting requirements, Nicor will still have a unilateral ability to make changes to its plans as it sees fit with no prior stakeholder or Commission approval. On the other hand, the People's proposal asks the Commission to establish limits on flexibility that *would not prevent* the Company from exceeding them should they so choose, but rather, would trigger goal adjustments if any budget shifts result in a variance from planned annual program budgets of 20% or more. AG IB at 25-27; AG Ex. 1.0 at 18. The People's proposal also requires the Company to report all planned changes to the SAG for comment and ideally to build consensus around the proposed change. AG IB at 27; AG Ex. 1.0 at 19. The AG proposal is not burdensome, would be transparent to all parties, and simply ensures that goals reflect the approximate plan being pursued. AG IB at 27-28. The People also note that this plan could also work in the Company's favor if they are having success with an expensive program and wanted to shift funds into it from a cheaper program. AG IB at 26.

The People urge the Commission to reject Nicor’s proposed conditions on its flexibility. Nicor IB at 22-25. As discussed in greater detail in the People’s Initial Brief, the Commission should not be swayed by the Company’s characterizations of its request for unfettered flexibility.<sup>4</sup> Nicor calls its conditions “reasonable restrictions on Nicor Gas’ flexibility.” Nicor IB at 23. However, as noted by the People, the only “constraints” on flexibility proposed by the Company are self-imposed and include budget shifts between programs with no exceptions other than a limit of a 10% shift between residential and commercial and industrial sectors. AG IB at 21-22; Nicor IB at 23-24; *see also* Nicor Ex. 1.0 at 21-22; Nicor Ex. 7.0 at 15-16. Nicor also asserts that its flexibility would avoid violations of statutory requirements related to low income funding in Section 8-104 of the Public Utilities Act. *Id.* The Company also argues that their proposed flexibility “strikes a balance between Commission oversight over any significant modification to the EEP and avoiding as unnecessary micro-management and approval of every adjustment.” Nicor IB at 24. As previously noted by the People, however, the Company’s requested level of flexibility may have been appropriate during Nicor’s first Plan, when the cost caps of Section 8-104(d) had not yet impacted program spending. AG IB at 21. However, this is not the case today, particularly given the reality of Nicor’s request for reduced goals given the 2% cap on spending. AG IB at 21. Essentially, granting Nicor its requested level of flexibility without limits provides it with an ability to pursue a completely different plan than what was originally offered in this docket. AG IB at 21-22; AG Ex. 2.0 at 3.

In their Initial Brief, the People outlined in greater detail their concerns with Nicor’s proposed self-imposed limitations. AG IB at 21-22. In particular, the People noted that none of the Company’s proposed criteria require any level of approval or agreement by the SAG or

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<sup>4</sup> See Nicor Ex. 7.0 at 18; Nicor Ex. 11.0 at 3.

Commission for intraclass program changes. AG IB at 21-22. Simply stated, the Company's only proposed requirement is notification. As noted by the People, the *actual* limitations presented by the Company's proposed second and third conditions are relatively minor. AG IB at 21-22; AG Ex. 1.0 at 40. The second condition does nothing to address the variances in the costs per unit of savings – one of the issues that most concerns AG witness Mosenthal. AG Ex. 1.0 at 40. The third condition merely reiterates that the Company will comply with Section 8-104 of the Public Utilities Act – which is barely relevant, as the funds for low income and public sector programs are not even part of Nicor's budget and Plan, but are separately provided to DCEO. AG IB at 22.

The People's proposal, on the other hand, protects both the Nicor and ratepayers by simply resetting goals to reflect the actual plan Nicor ultimately chooses to pursue. AG IB at 26-27. The energy savings goals adjustment can be made after the fact, is not burdensome, would be transparent to all parties, and simply ensures that goals reflect the approximate plan being pursued. AG IB at 25. Further, because the AG proposal permits Nicor to shift up to 20% of a program budget with no energy savings goals adjustments, it still provides the Company with a great deal of flexibility that would not even trigger any goal adjustments. Nicor would retain the needed flexibility to modify individual programs — for example adding or removing measures, adjusting incentives, changing marketing strategies, etc. — in order to respond quickly to market events or evaluation findings.

It also ensures that *all* decisions related to portfolio changes are discussed with the SAG. AG IB at 27; AG Ex. 1.0 at 19. Nicor should be ordered to first bring any proposed modifications to the SAG for discussion and ideally to build consensus around the change. This should happen whether or not the 20% limit is exceeded, but is particularly important for

significant changes. The SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs and provide the program administrators with an added level of security in knowing if any stakeholders have major concerns prior to any after-the-fact litigation. AG IB at 27.

To be clear, the People reiterate that they are not seeking to constrain Nicor from making the choices necessary to make to manage their portfolios. Rather, the People are simply recommending that the Commission establish *some limits* on flexibility. The proposed limits would not serve to prevent Nicor from exceeding them if they should so choose. Rather, the exceeding of a limit would trigger a goal adjustment in the event Nicor chose to exceed them.

The Company also notes that “the Commission has already rejected the AG’s claims in ComEd’s recent EEP docket, finding that significant budget shifts will be brought to the Commission’s attention and will not go unnoticed.” Nicor IB at 26-27. The People acknowledge that, in Docket No. 13-0495, the Commission noted that the AG’s proposal was not necessary “because the Commission will be aware of large budget shifts through reports to the Commission, but also if indeed ComEd is abusing its discretion there is nothing to stop Staff or an Intervenor from bringing this to the Commission’s attention.” ICC Docket No. 13-0495, Order (January 28, 2014), at 56. As previously noted, AG witness Mosenthal cited to his experience and is of the opinion that trying to catch any undesirable changes and *then* challenge them is a poor use of regulatory resources. AG IB at 23; AG Ex. 2.0 at 4. That plan also invites unnecessary litigation of programs that the Commission has made clear must incorporate stakeholder input through the SAG process. It is also unrealistic that such a process could be effectively completed in real time. *Id.* The People presented an example wherein the Company could choose to shift a large amount of spending from their most expensive program to their cheapest program. Such a change could be completed within days and would later be reported to

the Commission in a quarterly report. However, it remains unclear what the remedy would be, or whether any remedy could be timely enough, in the event that Staff or any Intervenors disagreed with this decision. *Id.*

Importantly, too, it should be noted that the Commission *did* adopt that portion of the AG's recommendation that requires ComEd to bring program budget shift proposals to the SAG for discussion and input and comment in its recently submitted three-year plan docket. ICC Docket No. 13-0495, Order of January 28, 2014 at 56. Moreover, the Commission recently granted rehearing in Ameren Docket No. 13-0498 on this very issue, to ensure that the Ameren and ComEd orders are consistent in this SAG-consultation requirement. ICC Docket No. 13-0498, Notice of Commission Action of March 20, 2014; *see also* ICC Docket No. 13-0498, Joint Application for Rehearing of AG/ELPC/CUB (February 27, 2014), at 3-9. At a minimum, the Commission's Order should reflect this requirement, advocated by the People, that mandates that the utility consult with the SAG prior to making program budget shifts.

Finally, the Company protests the People's use of the phrase "game the system," noting particularly that the People have provided "no examples to suggest that this has taken place during the Company's First EEP." Nicor IB at 24. The Company's argument, however, misunderstands the point of the People's proposal. As noted by the People in their Initial Brief, Commission approval of the Company's unlimited flexibility request would permit Nicor to effectively pursue a different and much cheaper plan than was actually approved by the Commission. AG IB at 29; AG Ex. 1.0 at 17-18; AG Ex. 2.0 at 3-4. To be clear, the People are not accusing Nicor of any actual or planned wrong-doing. However, if the Commission were to grant Nicor their requested flexibility to shift funds, the possibility remains that the Company could virtually guarantee



themselves easily met goals by simply shifting more resources to the cheapest programs, thus “gaming” the system. AG IB at 21; AG Ex. 2.0 at 3.

For all of these reasons as well as those presented in the People’s Initial Brief, the People urge the Commission to adopt the People’s proposal to limit flexibility such that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments should be adopted by the Commission. Further, at a minimum, the Commission should enter an order that makes clear that utilities should continue to bring all proposed program shift proposals to the SAG for input and comment, consistent with the Commission’s recent order in ComEd’s three-year plan proceeding, Docket No. 13-0495.

**B. Staff’s Proposed Reporting Requirements Do Not Solve the Problem of the Company’s Proposed Unlimited Flexibility**

Staff proposes a series of reporting requirements that essentially encompasses “a discussion of how [the Company] utilized the flexibility it was granted.” Staff IB at 12. The reporting, for example, should include a summarization of program activities; whether certain measures or programs were added or discontinued; spending and savings amounts in comparison to the Plan filing; changes in TRM or NTG values; market research; or other information that the Company relies upon in making decisions related to the exercising of its flexibility. Staff IB at 12-13. As noted by the People in their Initial Brief, the People oppose Staff’s flexibility proposal,<sup>5</sup> which essentially tacks on a requirement that any shift should seek to “maximize net benefits” and adds a number of rather burdensome and complex strategies and reporting requirements to effectively “police” the Company and prevent abuse of this allowed flexibility.<sup>6</sup> AG IB at 22. As noted by Mr. Mosenthal, Ms. Hinman’s proposal creating reporting requirements is “unrealistic, bureaucratically and administratively burdensome, and unlikely to

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<sup>5</sup> Staff IB at 13-15.

<sup>6</sup> See Staff Ex. 1.0 (Hinman Direct Testimony) at 12, 28.

work in practice.” AG IB at 22; AG Ex. 2.0 at 16. In addition, as to Staff’s suggestion to maximize net benefits, the parties to the SAG have generally endorsed balancing net benefits with other important policy objectives such as pursuing long lived measures, market transformation, and equity. AG IB at 22; AG Ex. 2.0 at 8.

The primary problem with Staff’s plan to “maximize net benefits,” is that, according to AG witness Mosenthal, a requirement allowing flexibility only where net benefits are maximized could encourage “cream skimming.” AG IB at 22; AG Ex. 2.0 at 8. As discussed in greater detail in the People’s Initial Brief, “cream skimming” refers to the pursuit of only the lowest cost energy efficiency measures, which is contrary to good policy in large part because it leaves behind other cost-effective opportunities. AG IB at 22; AG Ex. 2.0 at 8.

The People reiterate that, contrary to Staff’s potentially burdensome and contentious regulatory process, the People’s proposal sets reasonable limits on flexibility in transferring program dollars and creating appropriate incentives to encourage best practices, while granting the Company the freedom to manage their portfolio as they choose within those limits. The People, therefore, urge the Commission to adopt their proposal on flexibility. *See* AG IB at 25-29.

#### **IV. EVALUATION, MEASUREMENT & VERIFICATION**

##### **A. The People and Nicor Appear to be in Agreement That the NTG Framework to be Adopted in This Docket Must Incorporate SAG Input and Incorporate That Input When Non-consensus Exists**

In its Brief, Nicor acknowledges that it supports the AG recommendation that the Commission-approved NTG evaluation process should require evaluators to annually present its findings to the SAG for critical input related to development of annual NTG values, so that market and regulatory changes and other up-to-date variables impacting NTG analysis can be

considered. Nicor IB at 30-31. Most importantly, the Company acknowledges that when consensus does not exist during the annual evaluation process, the independent evaluator should consider the critical SAG input in developing the NTG value to be applied prospectively for the coming program year, rather than simply default to the values recorded in the last evaluation, which could be out-of-date, as was approved in the *ComEd* three-year plan docket, Docket No. 13-0495<sup>7</sup>. *Id.* at 31.

Likewise, in its Brief, the Commission Staff advocates that “[t]he key premise underlying Staff’s Modified NTG Framework proposal is consistent with the Commission’s finding in the Ameren Plan 2 Order: The NTG ratios that will be deemed are to reflect the best estimates of what the evaluated NTG ratios could reasonably be expected to be in the program year.” Staff IB at 20-21. The key difference between Staff’s NTG framework and the framework that Nicor and the AG have reached consensus on, however, is Staff’s inclusion of the provision concerning partially retroactive application of NTG values when non-consensus occurs. While the People have supported Staff’s proposal for the most part, the People, in the spirit of compromise, are willing to agree to prospective application of the NTG values. That being said, the Commission must ensure in its Order that the *SAG is given a reasonable period of time to review information and attempt to reach consensus*. As noted in the AG Initial Brief, technically, the reference to “prior to March 1” in Nicor’s proposed NTG framework could allow the evaluators to propose values on February 28<sup>th</sup> and then declare a failure to reach consensus the next day. AG Initial Brief at 37. The People believe that the SAG be relied upon to work out a reasonable schedule, so the Commission’s Order here need not specify the schedule. Rather, the Commission’s final order should simply be clear that reasonable time be allocated for this effort.

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<sup>7</sup> On March 19, the Commission granted the AG/ELPC/CUB request for rehearing on this issue in order to ensure consistency between the result in Ameren Docket No. 13-0498 and the ComEd proceeding.

As noted in the AG Initial Brief, the bottom line is that it is important for the Commission to understand the distinction between allowing evaluators the flexibility to select what they view as the best estimate of future NTG values and to work collectively on all utility NTG values with the SAG and incorporating those viewpoints shared therein, rather than be constrained by a single prior utility-specific study. The Commission's NTG finding in the Docket 13-0498 Ameren Order allows for this, and the Commission should order that same process here.

For all of the reasons discussed above, the Commission should adopt the OAG/Nicor agreed-upon NTG framework outlined above, which provides the utilities with certainty on upcoming Plan Year NTG ratios, based on a collaborative process that incorporates SAG input and the best, most up-to-date information affecting program values.

**B. The Company's Proposal to Adjust the Utilities' Savings Goals Based on Modifications to NTG and TRM Values Would Eliminate All Utility Performance Risk, Contrary to Section 8-104, and Should Be Rejected by the Commission**

Openly characterizing it as "part of the Company's proposed risk management approach," Nicor Gas recommends that the Commission establish savings goals that will be adjusted after the start of its three-year plan "in order to remain current with changes in NTG and TRM assumptions that also begin after the start of the Second EEP." Nicor Brief at 37. The Company notes that its proposal is similar to the adjustable savings goals adopted by the Commission in Docket No. 10-0570, in which the Commission approved ComEd's second EEP, citing *Commonwealth Edison Co.*, Docket No. 10-0570 (Final Order, Dec. 21, 2010) at 46-47. Nicor IB at 38. Nicor admits, however, that the Company's proposal differs than the ComEd approach, which was limited to one measure in one program, and only included adjustments for changes in NTG results. What Nicor fails to mention, too, is that that Commission-granted allowance came about as the result of a unanimous

settlement. *See* Docket No. 10-0570, Order of December 21, 2010, *gen'ly*. That is an important distinction that should not be lost on the Commission.

Moreover, ComEd itself in its most recent three-year plan filing did not request and was not granted such adjustable savings goals. *See* Docket No. 13-0495, Order of January 28, 2014, *gen'ly*. Nicor's only reason for requesting the savings goal adjustment provision is to minimize risk of financial penalty, pursuant to Section 8-104(i), tied to any failure to achieve the Commission's approved goal level. In the AG Initial Brief, the People highlighted the reasons why Nicor's proposal constitutes flawed public policy. In short, the proposal is inconsistent with the penalty provisions of Section 8-104(i); ignores the impact that program administrators have in affecting the quality and savings achieved in energy efficiency programs, thereby impacting the Company's incentive to manage and modify programs when NTG analysis produces less than expected savings; and would be technically burdensome and administratively complex to manage. AG IB at 39-48. Nicor responds in its Brief with claims that few gas measures would be impacted by the proposal, and that the process would, in fact, not be difficult. Nicor IB at 39-40. It further complains that unexpected evaluations could have a dramatic impact on the portfolio and Nicor's ability to achieve the approved savings goals, and that the AG's claim that permitting this savings goal adjustment mechanism would not eliminate all of the Company's evaluation and realization risks, as not all of its measures are not covered by the TRM. *Id.* at 40-41.

But Nicor misses the point in this matter. The Nicor proposal – which Staff aptly characterized as the “set-it-and-forget-it” approach to achieving energy savings – is a model rooted in minimizing risk to Nicor shareholders rather than a model for maximizing energy savings. Stated another way, it is a means to reduce the risk for assessment of financial penalties

outlined in Section 8-104(i). Neither Section 8-104 nor the Public Utilities Act as a whole directs the Commission to minimize shareholder risk of penalty when a utility fails to achieve that which the Commission has ordered. This is particularly true in the realm of ratepayer-financed energy efficiency programs, which are separately accounted for in the Company's business and rate structure. The General Assembly made clear that the utilities are required to deliver energy efficiency programs for the financial benefit of ratepayers and to assist in the reduction of natural gas usage. *See* 220 ILCS 8-104(a). The Commission's focus in this docket should be on approving policies that maximize energy savings achievement, not insulate the utility from risk. That is particularly true in this docket, wherein the utility is requesting the approval of savings goals that are less than the savings requirements listed under Section 8-104(c).

For its part, Staff recommends adoption of the Company's proposal, with the addition of Staff filing requirements, and asks nothing more than that "the Company should continue to prudently manage the portfolio and adjust funds during a program year in a manner that seeks to increase net savings beyond the modified savings goal and maximize net benefits for ratepayers while remaining in compliance with the other statutory objectives." Staff IB at 35-36. This may sound good in theory, but it naively requests utility best practices after providing an incentive to put the programs on autopilot. As noted above, Staff admits that the adjustable savings goal proposal amounts to a "set-it-and-forget-it" approach to program management. Moreover, Staff never explains how or why its proposal will ensure that the Company will "continue to prudently manage the portfolio." Staff IB at 35-36. The Commission should reject Staff's endorsement of the proposal and its additional filing requirements.

For all of these reasons, and the reasons stated in the AG Initial Brief, the Commission should reject Nicor's request for an adjustable savings goal

**C. The Parties are in Agreement That Both Spillover and Free Ridership Assessments Should Be Included In NTG Analysis**

In its Brief, Nicor outlines a NTG framework that specifically requires an independent evaluation to consider the effect of spillover in NTG assessments. Nicor acknowledges that (1) excluding spillover from NTG calculations is likely to unfairly reduce a program administrator's calculated savings; (2) because it can be costly to determine spillover, the independent evaluator should not be required to always include it in NTG ratio calculations; and (3) the independent evaluator, however, should consider spillover, including, when appropriate, relying on deemed values developed from evaluations of other programs, while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements. Nicor IB at 30. As noted in the AG Initial Brief, the People concur with this recommendation. AG IB at 48-50.

Staff's Initial Brief recommends that the Commission reject Nicor's proposal, but it is unclear exactly what Staff finds objectionable beyond the Company's reference to permitting reliance on other spillover studies. Staff IB at 21-22. It argues that the Commission should enter a finding related to spillover analysis consistent with the Ameren (131-0498) and ComEd (13-0495) orders. On that point, the People agree.

In sum, the Commission's final order should ensure that NTG analysis includes both spillover and free ridership assessments. As noted above, and in consideration of EM&V resources, the Commission should enter a finding that mimics the conclusion in the Ameren (13-0498) and ComEd(13-0495) orders, which Commission directs evaluators to (1) always include

both free ridership and spillover assessments, while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.

## **V. THE STAKEHOLDER ADVISORY GROUP (“SAG”) AND PROPOSED ENERGY EFFICIENCY POLICY MANUAL**

### **A. Nicor’s Proposed Sub-Committee SAG Framework Should Be Rejected**

The People, in their Initial Brief, urged the Commission to specifically direct the Company to continue participating with the SAG, to work with the SAG on developing an Illinois Energy Efficiency Policy Manual, and reject Nicor’s request for program administrator-driven subcommittees. AG IB at 51-55.

Nicor suggests that, based on the “extensive list of issues” facing SAG, that plan administrators should take on a new and enlarged role as a sub-committee to vet and bring proposals to SAG. Nicor IB at 28; Nicor Ex. 7.0 at 26. Nicor asserts that this process is “routine, reasonable, and efficient, . . . completely transparent and beneficial to the overall SAG process.” Nicor IB at 28; Nicor Ex. 11.0 at 9-10. The People reiterate that they strongly oppose Nicor’s proposal. As discussed in greater detail in the People’s Initial Brief, Nicor’s proposal stands contrary to the function and purpose of the SAG to date. AG IB at 53. The SAG was adopted to enable the creation of best practices through consultation with stakeholder representatives and experts. Staff agrees with this characterization, particularly where Staff witness Hinman notes that any party can bring ideas for presentations to the SAG in its current format and that the “primary purpose of SAG is to provide input to the program administrators and the Commission.” AG IB at 53; Staff Ex. 3.0 at 9. Staff further notes in their Initial Brief that Nicor “has provided no evidence showing that exclusionary subcommittees would produce a more desirable outcome than subcommittees open to all interested parties” and that “the Commission should find that any SAG subcommittees should be open to *all interested stakeholders*,



consistent with the open and transparent process experienced to date.” Staff IB at 38 (Emphasis added).

In addition, adopting Nicor’s proposal would be starkly out of character given the Commission’s expansion of the SAG’s role over the past years and the work on establishing the TRM that the SAG has accomplished to date. AG IB at 53; *see, e.g.*, ICC Docket No. 10-0564, Order of May 24, 2011 at 92. Finally, the People noted that the Commission, in forming the SAG, stressed that it was creating a stakeholder-driven process. AG IB at 53, *citing* ICC Docket No. 07-0540, Order of February 6, 2008 at 32. As previously noted, stakeholders’ expert presentations on best practices to the plan administrators in attendance are the norm, and the Commission has a history of orders stressing the importance of the purpose of the SAG: to instigate *stakeholder* involvement and collaboration with utility Plan administrators. AG IB at 53. The People urge the Commission to reject Nicor’s proposal to turn the Commission’s SAG directive on its head and limit stakeholder involvement on issues that the Commission has forwarded to the SAG to address collaboratively.

#### **B. The Commission Should Approve the OAG Recommendation for the SAG Creation of An Energy Efficiency Policy Manual**

As to the proposed policy manual, the Commission recently approved the creation of a policy manual in both the Ameren (13-0498) and ComEd (13-0495) dockets<sup>8</sup>, and the parties generally appear to be in agreement that such a manual should be ordered in this docket, subject to some considerations.<sup>9</sup> *See* Staff IB at 33-34; Nicor IB at 44. Nicor and Staff encourage the Commission to limit the scope to create a consensus-based manual focused on “evaluation-

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<sup>8</sup> ICC Docket No. 13-0498, Order (January 28, 2014), at 129; ICC Docket No. 13-0495, Order (January 28, 2014), at 130.

<sup>9</sup> The People note that Nicor also continues to assert that program resources may be better spent on implementing Plan 2 instead of discussing the scope of the proposed policy manual.

related issues” with no discussion of prudence or program implementation. Staff IB at 34; Nicor IB at 44.

As to Staff’s and Nicor’s concerns about limiting the scope of the manual, the People specifically note that despite Staff’s interpretation of the order in the ComEd three-year plan Docket (13-0495), the Commission did not specifically constrain the SAG from exploring topics outside of evaluation-related issues in that docket. Rather, the Commission adopted the AG’s proposal, specifically designed to achieve the goal of ensuring consistency in terms of monitoring savings achieved and evaluating programs:

The Commission believes that the AG's clarified proposal is specific, addresses an inconsistency between utilities in Illinois that may warrant attention, and is reasonable. As a result, to the extent possible, the Commission directs the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

Docket No. 13-0495, Order of January 28, 2014 at 130; *see* AG IB at 55. Contrary to the views originally expressed by Staff, the People are not seeking to further burden the SAG or create additional work that further constrains already limited resources. Rather, as discussed in the testimony of Mr. Mosenthal, the People seek to create a manual that is designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission. Such a manual, for example, could provide a common definition of administrative costs so that each utility is defining these costs in a consistent manner. Such an effort will help ensure that programs are delivered and evaluated based on the same foundational assumptions. AG Ex. 1.0 at 44.

For these reasons as well as those noted in the People’s Initial Brief, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete

an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

## **VI. CONCLUSION**

WHEREFORE, the People respectfully request that the Illinois Commerce Commission enter an order consistent with the recommendations made in this Reply Brief and in the People's Initial Brief.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
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